

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PETER J. MCDANIELS,)	
)	CASE NO. C12-1289-TSZ-MAT
Plaintiff,)	
)	
v.)	ORDER DIRECTING CLERK TO
)	IDENTIFY PRO BONO COUNSEL
BILL ELFO, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff proceeds *pro se* and *in forma pauperis* (IFP) in this civil rights action, and seeks the appointment of counsel. (Dkts. 241.) He is currently incarcerated at Stafford Creek Corrections Center, and brings claims regarding his prior confinement at Whatcom County Jail. (See Dkt. 142.) Having considered the motion for appointment of counsel, as well as the remainder of the record, the Court finds and ORDERS as follows:

(1) There is no right to have counsel appointed in cases brought under § 1983. Although the Court, under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding IFP, it may do so only upon a showing of exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). A finding of exceptional circumstances

01 requires an evaluation of both the likelihood of success on the merits and the ability of the
02 individual to articulate his claims *pro se* in light of the complexity of the legal issues involved.
03 *Id.* These factors must be viewed together before reaching a decision on a request for counsel
04 under § 1915(e)(1). *Id.*

05 In this case, several of plaintiff's claims have survived motions for summary judgment,
06 including claims relating to plaintiff's religious practices and the conditions of confinement at
07 the jail. (*See* Dkt. 244; *see also* Dkts. 195, 215, 220, and 232.) Given the complexity of the
08 legal issues involved in those claims, the Court concludes it will be difficult for plaintiff to
09 continue to pursue this case *pro se*. The Court also notes that other dispositive motions remain
10 pending on the docket (Dkts. 225, 236) and that the Court recently extended the dispositive
11 motion filing deadline (Dkt. 239). Considering all of the above, the Court finds exceptional
12 circumstances warranting the appointment of counsel in this matter. However, plaintiff is
13 advised that there is no guarantee *pro bono* counsel will be identified. The motion for
14 appointment of counsel (Dkt. 241) is, therefore, GRANTED contingent upon the identification
15 of counsel willing to represent plaintiff in this matter.

16 (2) The Clerk is DIRECTED to identify counsel from the Pro Bono Panel to
17 represent plaintiff. Upon the identification of *pro bono* counsel, the Court will issue an order
18 appointing counsel.

19 ///

20 ///

21 ///

22 ///

01 (3) The Clerk is further directed to send a copy of this Order to plaintiff, counsel for
02 defendants, and to the Honorable Thomas S. Zilly.

03 DATED this 28th day of May, 2014.

04
05 

06 Mary Alice Theiler
07 Chief United States Magistrate Judge
08
09
10
11
12
13
14
15
16
17
18
19
20
21
22